

This letter discusses nexus issues related to a company and its newly created subsidiaries, which may be in the business of selling tangible personal property for use in Illinois. See 86 Ill. Adm. Code 150.201(i). (This is a GIL.)

January 14, 2002

Dear Xxxxx:

This is in response to your facsimile of December 31, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Web site at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are requesting a private letter ruling from the State of Illinois regarding nexus.

AAA is a STATE based pharmacy benefit management company providing mail order prescription drugs and other services to its members such as prescription claim processing, home infusion therapy, etc. The products and services AAA provides are generally exempt from sales tax. Illinois is the only state that imposes a sales tax on prescription drugs.

AAA operates distinctly separate business units; mail order pharmacy, patient profiling, home infusion therapy, claims processing, and vision benefits. Prior to 1999, AAA had nexus with Illinois due to its nurses entering the state on occasion to provide home infusion services to Illinois patients. As a result, AAA had nexus with Illinois for purposes of collecting and remitting sales tax on pharmaceutical drugs dispensed in Illinois through its mail order business.

On January 1, 1999, AAA created two new companies. The first was BBB, and the second was CCC. All sales activities and personnel were transferred to BBB. BBB has salespeople who enter the state and CCC has nurses who enter the state to provide home infusion services to Illinois patients. All home infusion activities and personnel were transferred to CCC. Neither AAA nor any of its subsidiaries operate a physical location in Illinois.

On January 1, 2000, AAA created another separate entity; DDD. All of AAA's mail order pharmacy operations and personnel were transferred to DDD. AAA is now an administrative company only. It is physically located in the STATES.

DDD is a mail order pharmacy with physical locations in STATES. DDD uses the US postal service to deliver prescription pharmaceuticals to its customers, some of which

are located in Illinois. DDD does not have a physical location, representatives, or salespeople in the State of Illinois.

Question 1:

Under the facts as described above, does DDD have nexus in the State of Illinois?

The affiliated nexus rule 86 IL Adm. Code Ch. I, Sec. 150.201.5 states that a business being owned or controlled by the same interests which own or control any retailer engaging in business in the same or similar line of business in this state has an obligation to collect and remit sales tax. Therefore, DDD should not have nexus with Illinois for the following reasons:

1. DDD has no direct contact with Illinois.
  - a. It ships its product by common carrier.
  - b. It has no employees entering the state for any business reason.
  - c. It operates no physical location within the state and owns no property in the state.
2. AAA has several subsidiaries, one of which is DDD. However, while these entities may have a connection to each other through the common parent none of the companies are in the same or similar lines of business.

Question 2:

Under the facts as described above does AAA have nexus with Illinois?

1. AAA no longer has any direct connection with the state.
2. No employees enter the state for any business reason.
3. It operates no physical location within the state and owns no property in the state.

We appreciate your consideration regarding the questions above. If you need additional information, please do not hesitate to contact me. I may be reached by phone.

Determinations regarding the subject of nexus are normally very fact specific. The Department has found that the best manner in which to determine nexus is for a Department auditor to examine all relevant facts and information. The following guidelines are provided, however, to help you in determining whether your corporation or any of its various subsidiaries would be considered a retailer maintaining a place of business in Illinois such that it is subject to Illinois sales tax collection obligations.

The term "retailer" means and includes every person engaged in the business of selling tangible personal property for use and not for resale in any form. See 86 Ill. Adm. Code 150.201(h), a copy of which is enclosed for your reference. An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in the enclosed copy of Department regulations 86 Ill. Adm. Code 150.201(i). This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer

must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S. Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have a physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative and it is immaterial for tax purposes that the representative's presence is temporary. Please refer to Brown's Furniture, Inc. v. Zehnder, 171 Ill.2d 410 (1996).

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

Your letter contained very few specific facts regarding the nature and activities of each company, or their specific relationships. As stated above, determination of nexus with Illinois is very fact specific, with such determinations best made by an auditor who can examine all information. We regret we cannot provide a more detailed response.

I hope this information has been helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion  
Associate Counsel

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